Supreme Court, U.S.
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No. 99-1979

In The

Supreme Court of the United States

CREIGHTON E. MILLER, Administrator of the Estate of Matthew Williams, Deceased,

Petitioner,

v.

ARCO MARINE, INC.; ATLANTIC RICHFIELD COMPANY; CHEVRON U.S.A., INC.; UNOCAL CORPORATION; NATIONAL BULK CARRIERS, INC.,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Alabama

REPLY TO BRIEF IN OPPOSITION

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Reply Brief of Petitioner Miller

Now comes Creighton E. Miller, Administrator of the Estate of Matthew Williams, and presents his reply to the brief filed by Respondents in opposition to his petition. Respondents make three basic arguments in opposition to the petition for certiorari.

I. There *Is* a Federal Question at Issue

Respondents argue that there is no federal question in this case, and that therefore this Court does not have jurisdiction to hear this case. Respondents make no attempt to substantiate this assertion, claiming without reference to any portion of the opinion that the Alabama Supreme Court decided the case using state law. In fact, this contention is belied by Respondents' admission that the Alabama courts decided this issue based on federal law: Respondents admit that the trial court held that Petitioner's evidence was not sufficient *"under the Jones Act."* Respondents' Brief, p. 4. As Justice Cook wrote in his dissent to the Alabama majority, "The applicable law is, of course, maritime law." App. 7.

This case is governed by the Jones Act. It is black-letter law that while state courts have concurrent jurisdiction over maritime claims, a state court must apply substantive federal maritime law, and not state law. *Offshore Logistics, Inc. v. Tallentire,* 477 U.S. 207, 222 (1986). Petitioner submits that he has shown that the Alabama Supreme Court has misinterpreted this Court's precedent on Jones Act causation, and the federal question is apparent.

II. The Issue Is Causation, and Respondents Know It

Respondents argue that the Alabama Supreme Court ruled only on the sufficiency of the factual evidence and did not reach the legal issue of causation. The relevant question is, "Sufficient evidence *for what purpose*?" Respondents claim that there was not sufficient evidence to create a material issue of disputed fact, but cite to a page of the Alabama Supreme Court's opinion that offers no support for this contention. In truth, the holding of the Alabama court does go to the legal issue of causation.

What the Alabama Supreme Court held is that Petitioner did not submit substantial evidence of substantial exposure to benzene. There is no legal or logical reason to require a substantiality standard unless the court was making a legal determination that exposure to lower levels of benzene is not sufficient to present a jury question on proximate causation. The Alabama Supreme Court's requirement of **substantial** exposure is a legal conclusion that anything less than substantial exposure cannot legally cause injury.

Respondents thankfully illuminate the issue well in their brief: "[T]he issue was Petitioner's failure to discharge his obligation to first demonstrate by the requisite evidence that decedent in fact experienced such shipboard exposures and at such concentrations and for such durations *that an unsafe workplace was created.*" Respondents' Brief, p. 7. Why would a workplace be unsafe? Because working there can cause cancer. Respondents agree that the evidence is only insufficient if one holds that it is not enough to prove causation. Likewise, Respondents state that Petitioner did not submit evidence

"sufficient to permit a jury to infer that such exposure created an unsafe place to work and *caused him to develop multiple myeloma.*" Respondents' Brief, p. 5. Respondents are conflicted: while arguing that the issue is not causation, they cannot help but let a Freudian slip of legal truth into their brief, admitting that the alleged insufficiency goes to the causation element.

Hedging their bets in the event that the issue is causation, Respondents try to distinguish *Sentilles v. Inter-Caribbean Corp.*, 361 U.S. 107 (1959), from Mr. Williams's case. They point out that *Sentilles* concerned a "proven discrete exposure" [actually, the case involved an accident, not a toxic exposure], unlike the long-term exposure at issue in our case. This is not a relevant distinction, however. The Alabama Supreme Court acknowledged that Williams was exposed to benzene. Having granted this evidence, the case parallels *Sentilles*:

> ***Sentilles*:** Given accident X, could X have caused Petitioner's injury?
>
> **Our Case:** Given exposure, could this exposure cause Petitioner's injury?

Sentilles held that even in the face of weak and contradictory medical testimony, the jury may reasonably infer causation. As shown above, the Alabama court's substantiality requirement is a causation issue, and therefore *Sentilles* controls, giving Williams the benefit of a more liberal standard than the Alabama Supreme Court required. The Alabama Supreme Court has precluded jury deliberation on the causation issue because it held that the jury may not make a reasonable inference, rather

it must rely on substantial evidence of substantial exposure. Petitioner has evidence of exposure, and the Alabama court acknowledged it. What the Alabama court demands is more evidence to show causation than is required under the Jones Act. This is not the reasonable inference standard of *Sentilles*.

III. Petitioner Does Not Ask for a Factual Review; Petitioner Requests that this Court Prevent the Alabama Supreme Court from Writing Its Own Burdensome Causation Standard

Respondents try to pigeonhole this case as factual and not legal, and they quote from the concurrence and dissent to *Sentilles* that such factual review issues are inappropriate for this Honorable Court to hear. Petitioner agrees that such cases are inappropriate, but Petitioner has tried to make clear that he is not seeking a factual review. Instead, he asks that this Court consider whether the Alabama Supreme Court has placed a higher legal burden on him than the Jones Act and this Court require. The correct standard is very relaxed, and requires only evidence from which a jury may infer exposure and causation.[1] Respondents state that "petitioner was not

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[1] Respondents state that Petitioner argues "without citation" that a Petitioner need only present evidence from which a jury may reasonably infer exposure. Contrary to Respondents' claim, this statement is supported in the petition, and Petitioner repeats the citation here to avoid any further misunderstandings on the part of Respondents: *Sentilles*, 361 U.S. at 110 (holding that the focal point of judicial review on causation issues is the "reasonableness of the particular inference or conclusion."). Petitioner has the correct standard.

entitled . . . to equate possible exposure with an unsafe workplace or with medical causation." Respondents' Brief, p. 7. Petitioner asks for no special treatment; he simply wants to have his case heard by a court applying the proper legal standard so that he may have his case heard by an impartial jury. Petitioner is prepared to allow a jury to decide whether his exposure to benzene was the cause of his cancer.

Respondents argue further that Petitioner did not present evidence of air sampling and biological monitoring. Petitioner does not want to waste this Court's time with irrelevant factual arguments but will briefly reply in order to dispel the prejudicial effects of this argument. In these maritime benzene exposure cases there will be no testimony presented that on such-and-such a date, a witness stood next to the now deceased mariner with a sophisticated measuring device and recorded a precise level of benzene exposure for an exact length of time. No such evidence will be presented because it does not exist. Such testimony never exists in any toxic exposure case based upon workplace exposure over many years. To hold that such precision is required is to hold that a toxic-tort Petitioner can never recover.[2] What has been presented,

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[2] *See Ferebee v. Chevron Chemical Co.*, 736 F.2d 1529, 1535-36 (D. C. Cir. 1984) ("In a courtroom, the test for allowing a Petitioner to recover in a tort suit of this type is not scientific certainty but legal sufficiency . . . "). Petitioner must ask whether this Court believes that Respondents would have considered air sampling or other tests on their tankers twenty to fifty years after Mr. Williams sailed aboard these tankers as valid evidence of their liability. Petitioner is better off with solid circumstantial evidence than the sort of tests Respondents suggest.

literally in *volumes*, is classic worksite testimony by persons who worked with or near the deceased, on the same vessels, during the same periods of time. This is legally sufficient circumstantial evidence of Williams's exposure. This Court has underscored the propriety of circumstantial evidence in maritime tort cases. In *Michalic v. Cleveland Tankers, Inc.*, 364 U.S. 325, 330 (1960), a Jones Act case, the Court states that "direct evidence of a fact is not required. Circumstantial evidence is not only sufficient, but may also be more certain, satisfying and persuasive than direct evidence." Respondents may want to argue facts to this Court, but Petitioner wants to argue the law.

IV. Conclusion

Petitioner does not ask this Court to review the facts of his case. In fact, Petitioner has submitted very little of the evidence that he presented to the Alabama courts. This Court does not need a deep factual knowledge of the case to recognize that the Alabama Supreme Court has muffed the Jones Act causation standard. The causation standard is **liberal**. A substantiality standard is anything but liberal. Petitioner asks that this Court not allow erroneous Alabama precedent to compromise the federal

rights of thousands of litigant seamen in that state and throughout the country.

Respectfully submitted,

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Dated at Detroit, Michigan
this 22nd day of September, 2000.